

Lawrence and a U.S.-flag leg for the remainder of the voyage. The “fair and reasonable” rate for this mixed service will be determined by considering the U.S.-flag component under the existing regulations at 46 CFR Part 382 or 383, as appropriate, and incorporating the cost for the foreign-flag component into the U.S.-flag “fair and reasonable” rate in the same way as the cost of foreign-flag vessels used to lighten U.S.-flag vessels in the recipient country’s territorial waters. Alternatively, the supplier of the commodity may offer the Cargo FOB Canadian transshipment point, and MARAD will determine fair and reasonable rates accordingly.

[61 FR 24897, May 17, 1996]

PART 382—DETERMINATION OF FAIR AND REASONABLE RATES FOR THE CARRIAGE OF BULK AND PACKAGED PREFERENCE CARGOES ON U.S.-FLAG COMMERCIAL VESSELS

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AUTHORITY: Secs. 204 and 901 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114, 1241); 49 CFR 1.66.

SOURCE: 54 FR 49088, Nov. 29, 1989, unless otherwise noted.

§ 382.1 Scope.

These regulations prescribe the type of information that must be submitted by operators interested in carrying bulk and packaged preference cargoes, and the method for calculating fair and reasonable rates for the carriage of dry (including packaged) and liquid bulk preference cargoes on U.S.-flag commercial vessels, except less than full cargoes on liner vessels, pursuant to section 901 of the Merchant Marine Act, 1936, as amended.

§ 382.2 Data Submission.

(a) *General.* The operators shall submit information, described in paragraphs (b) and (c) of this section, to the Director, Office of Ship Operating As-

sistance, Maritime Administration, Washington, DC 20590. To the extent a vessel is time chartered, the operator shall also submit operating expenses for that vessel. All submissions shall be certified by the operators and are subject to verification, at MARAD’s discretion, by the Office of the Inspector General, Department of Transportation. MARAD’s calculations of the fair and reasonable rates for U.S.-flag vessels shall be performed on the basis of cost data provided by the U.S.-flag vessel operator as specified herein. Failure of a vessel operator to submit the required cost data will result in MARAD being unable to construct the guideline rate for the affected vessel, which may result in such vessel not being approved by the sponsoring Federal agency.

(b) *Required information for each vessel.* The following information shall be submitted not later than 120 days following the effective date of this part for the previous calendar year and shall be updated not later than April 30 for each subsequent calendar year. In instances where a vessel has not previously participated in the carriage of cargoes described in § 382.1, the information shall be submitted not later than the same date as the offer for carriage of such cargoes is submitted to the sponsoring Federal agency, and/or its program participant, and/or its agent and/or program’s agent, or freight forwarder.

(1) Vessel name.

(2) Vessel DWT and net registered tonnage for the Suez and Panama Canals.

(3) Date built, rebuilt and/or purchased.

(4) Normal operating speed.

(5) Daily fuel consumption at normal operating speed, in metric tons (U.S. gallons for tugs) and by type of fuel, per day.

(6) Fuel consumption in port while pumping and standing, in metric tons (U.S. gallons for tugs), by type of fuel, per day.

(7) Total capitalized vessel costs (list and date capitalized improvements separately), and applicable interest rates for indebtedness (where capital leases are involved, the operator shall report

the imputed capitalized cost and imputed interest rate).

(8) Operating cost information, such information to be submitted, by vessel, in the format stipulated by 46 CFR 232.1, Form MA-172 Schedule 301. Tug/barge operators shall submit such information separately for each tug and barge employed in the preference trade. Information shall be applicable to the most recently completed calendar year.

(9) Number of vessel operating days pertaining to data reported in paragraph (b)(8) of this section for the year ending December 31. For purposes of this regulation an operating day is defined as any day on which a vessel or barge unit is in a seaworthy condition, fully manned, and either in operation or standing ready to begin operations.

(c) *Required port and cargo handling information.* The following port and cargo handling costs shall be provided for each cargo preference voyage within 60 days of the termination of the voyage, identifying the vessel, cargo and tonnage, and round-trip voyage itinerary including dates of arrival and departure at port or ports of loading and discharge.

(1) *Port expenses.* Total expenses or fees, by port, for pilots, tugs, line handlers, wharfage, port charges, fresh water, lighthouse dues, quarantine service, customs charges, shifting expense, and any other appropriate expense.

(2) *Cargo expense.* Separately list expenses or fees for stevedores, elevators, equipment, and any other appropriate expenses other than dispatch.

(3) *Extra cargo expenses.* Separately list expenses or fees for vacuators and/or cranes, lightening (indicate tons moved and cost per ton), grain-to-grain cleaning of holds or tanks and any other appropriate expenses.

(4) *Canal expenses.* Total expenses or fees for agents, tolls (light or loaded), tugs, pilots, lock tenders and boats, and any other appropriate expenses. Indicate waiting time and time of passage.

(d) *Other requirements.* Unless otherwise provided, operators shall use 46 CFR part 232, Uniform Financial Reporting Requirements for guidance in submitting cost data. Data require-

ments stipulated in paragraph (b) of this section that are not included under those reporting instructions shall be submitted in a similar format. If the operator has already submitted to MARAD, for other purposes, any data required under paragraph (b) of this section its submission need not be duplicated to satisfy the requirements of this regulation.

(e) *Presumption of confidentiality.* MARAD will initially presume that the material submitted in accordance with the requirements of these regulations is privileged or confidential within the meaning of 5 U.S.C. 552(b)(4). In the event of a subsequent request for any portion of that data under 5 U.S.C. 552, MARAD will inform the submitter of such request and allow the opportunity to comment. The submitter shall claim confidentiality at that time by memorandum or letter, stating the basis, in detail, for such assertion of exemption to disclosure, including, but not limited to, statutory and decisional authorities. Those parts not so claimed will be subject to initial determination by the Freedom of Information Act Officer.

(Approved by the Office of Management and Budget under control number 2133-0514)

[54 FR 49088, Nov. 29, 1989, as amended at 56 FR 57808, Nov. 14, 1991]

§382.3 Determination of fair and reasonable rates.

Fair and reasonable rates for the carriage of preference cargoes on U.S.-flag commercial vessels shall be determined as follows:

(a) *Operating cost component.* An operating cost component, based on actual operating costs of each participating vessel, shall be determined on the basis of operating cost data for the calendar year immediately preceding the current year that has been submitted in accordance with §382.2. The operating cost component shall include all operating cost categories, as defined by 46 CFR 232.5, Form MA-172 Schedule 301, Operating Expenses. (For purposes of this rule, charter hire expenses are not considered operating costs.) Such data shall be escalated by MARAD yearly to the current period utilizing escalation